

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

DARIN ARMS,

Defendant.
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MEMORANDUM AND ORDER

Case No. 01-CV-286

Appearances:

For the United States:

LORETTA E. LYNCH, ESQ.

United States Attorney

Eastern District of New York

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For the Defendant:

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BLOCK, Senior District Judge:

On May 21, 2002, Darin Arms pleaded guilty to possessing at least 50 grams of cocaine base with the intent to distribute it. He was sentenced principally to 210 months' imprisonment. Pursuant to 18 U.S.C. § 3582(c)(2), he now moves to be resentenced under the retroactive amendments to the drug quantity table in § 2D1.1(c) of the Sentencing Guidelines.

Although Arm's crime involved cocaine base, he was ultimately sentenced under § 4B1.1 — the "Career Offender" Guideline. *See* Tr. of Jan. 28, 2003, at 23-24 (downwardly departing "by reason of what [the Court believed] to be an over-representation of the career offender criminal history calculation"). In *United States v.*

Martinez, 572 F.3d 82 (2d Cir. 2009), the Second Circuit held that “a defendant convicted of crack cocaine offenses but sentenced as a career offender under U.S.S.G. § 4B1.1 is not eligible to be resentenced under the amendments to the crack cocaine guidelines.” *Id.* at 85; *see also United States v. Mock*, 612 F.3d 133, 138 (2d Cir. 2010) (reaffirming *Martinez*). Accordingly, Arms’s motion must be denied.

SO ORDERED.

s/ Judge Frederic Block

FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
May 2, 2012